



MAGISTRATE JUDGE



10-CR-05099-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM A. McCLELLAN,

Defendant/Petitioner.

) NO. CR10-5099

) FINDINGS AND ORDER ACCEPTING
) DEFENDANT FOR DEFERRED
) PROSECUTION, APPROVING
) TREATMENT PLAN, AND DIRECTING
) DEFENDANT TO TAKE TREATMENT
) AS PRESCRIBED

) (Clerk's Action Required)

THIS MATTER, coming on for hearing this 5th day of April, 2010 upon the defendant's Petition for Deferred Prosecution; the defendant appearing in person and by his attorney, Miriam F. Schwartz, Assistant Federal Public Defender; the United States of America being represented by Special Assistant United States Attorney Captain Fred Inman; the Court, having examined and incorporated into the record Petitioner's Petition and Statement in support of deferred prosecution, the evaluation and treatment report prepared by Social Treatment Opportunity Programs (STOP) and the files and records herein, being fully advised in the premises, does now make and enter the following:

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I. FINDINGS OF FACT

A. On or about the 24th day of October, 2009, Petitioner was charged with the offense/offenses charged in the Information. This offense occurred as a direct result of alcoholism/chemical dependency problems;

B. Petitioner suffers from an alcohol/drug problem and is in need of treatment;

C. The probability of similar misconduct in the future is great if the problem is not treated;

D. Petitioner is amenable to treatment;

E. An effective rehabilitative treatment plan is available to Petitioner through STOP, an approved treatment facility as designated by the laws of the State of Washington, and Petitioner agrees to be liable for all costs of this treatment program;

F. That Petitioner agrees to comply with the terms and conditions of the program offered by the treatment facility as set forth in the diagnostic evaluation from STOP, attached to Statement of Petitioner filed herewith, and that Petitioner agrees to be liable for all costs of this treatment program;

G. That Petitioner has knowingly and voluntarily stipulated to the admissibility and sufficiency of the facts as contained in the written police report attached to Statement of Petitioner filed herewith.

H. That Petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing or trial on the underlying offense or offenses held subsequent to revocation of this Order Granting Deferred Prosecution and that these reports will be used to support a finding of guilt;

From the foregoing FINDINGS OF FACT, the Court draws the following:

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1 **II. CONCLUSIONS OF LAW**

2 A. That the above-entitled Court has jurisdiction over the subject matter and
3 Petitioner William McClellan, in this case;

4 B. That Petitioner's Petition for Deferred Prosecution meets the requirements of
5 RCW 10.05 et seq.;

6 C. That the diagnostic evaluation and commitment to treatment meets the
7 requirements of RCW 10.05.150;

8 D. That Petitioner is eligible for deferred prosecution.

9 **III. ORDER**

10 Having made and entered the foregoing FINDINGS OF FACT and CONCLUSIONS OF
11 LAW, it is hereby

12 ORDERED that the defendant is accepted for deferred prosecution. The prosecution of
13 the above-entitled matter is hereby deferred for five (5) years pursuant to RCW 10.05 et seq.,
14 upon the following terms and conditions:

15 A. Petitioner shall be on probation for the deferral period and follow the rules and
16 regulations of probation;

17 B. Petitioner shall enroll in and successfully complete the two-year treatment
18 program recommended by STOP according to the terms and conditions of that plan as outlined
19 in the diagnostic evaluation, a true copy of which is attached to the Petition and incorporated
20 herein by reference. Petitioner shall not change treatment agencies without prior Probation
21 approval;

22 C. The treatment facility, STOP, shall file with the United States Probation Office
23 status reports of Petitioner's compliance with treatment, monthly during the first year of the
24 deferred prosecution period and every three (3) months during the second year. The Court may
25 increase the frequency of these reports at its discretion;

1 D. Petitioner shall notify U.S. Probation within 72 hours of any residence change.

2 E. Petitioner shall abstain during the deferred prosecution period from any and all
3 consumption of alcoholic beverages and/or non-prescribed mind-altering drugs;

4 F. Petitioner shall not operate a motor vehicle on the public highways without a valid
5 operator's license and proof of liability insurance sufficient to comply with the state laws on
6 financial responsibility;

7 G. Petitioner shall be law abiding and shall not commit any alcohol/drug related
8 offenses or other criminal offenses during the period of deferral,

9 H. Petitioner shall notify U.S. Probation within 72 hours of being arrested,
10 questioned, or cited by Law Enforcement;

11 I. In the event that Petitioner fails or neglects to carry out and fulfill any term or
12 condition of his treatment plan or violates any provision of this Order or any rule or regulation
13 of his probation officer, upon receiving notice, the Court shall hold a hearing to determine why
14 Petitioner should not be removed from deferred prosecution and prosecuted for the
15 offense/offenses charged;

16 J. In the event the Court finds cause to revoke this deferred prosecution, the
17 stipulated police reports shall be admitted into evidence, and Petitioner shall have her guilt or
18 innocence determined by the Court;

19 K. That the statement of Petitioner for Deferred Prosecution shall remain sealed, and
20 all subsequent reports or documents relating to her treatment information shall be sealed, to
21 maintain confidentiality of Petitioner's treatment information;

22 L. That the Department of Licensing be notified of this Order accepting the
23 Petitioner for deferred prosecution;

24 M. Upon proof of Petitioner's successful completion of five years deferral period in
25 this Order, the Court shall dismiss the charges pending against Petitioner.
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1 N. Additional conditions: _____

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6 DONE IN OPEN COURT this 6 day of April, 2010.

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10 UNITED STATES MAGISTRATE JUDGE

11 Presented by:

12

13 /s/ Miriam Schwartz

14 Miriam Schwartz

15 Attorney for Petitioner